

<sup>2</sup> The Board notes that, following the June 4, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted January 15, 2019 employment incident.

### **FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>4</sup> The facts, as set forth in the Board's prior order, are incorporated herein by reference. The relevant facts are as follows.

On January 18, 2019 appellant, then a 64-year-old head of training support, filed a traumatic injury claim (Form CA-1) alleging that on January 15, 2019 he hit his head and injured his back when he slipped on ice walking from a road to a walkway while in the performance of duty. He stopped work on January 15, 2019.<sup>5</sup>

Dr. Vishal Bindal, a Board-certified neuroradiologist, examined appellant on January 15, 2019 and noted his history of injury. He diagnosed traumatic pain, as well as a history of chronic back pain. Dr. Bindal reviewed x-rays and indicated no acute lumbar spine findings.

In a January 31, 2019 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from him and provided a questionnaire for his completion. OWCP provided 30 days for a response.

In January 18 and 30, 2019 notes, Dr. Vipul Mangal, a Board-certified pain medicine specialist, described appellant's January 15, 2019 fall and diagnosed lumbar radiculopathy.

Dr. Yolanda Reid, a Board-certified family practitioner, examined appellant on February 26, 2019 and diagnosed lumbar disc herniation and lumbar facet arthropathy. She noted that appellant had experienced a fall one month ago and suffered moderate-to-severe back pain. Dr. Reid found muscle weakness in the right lower extremity.

By decision dated March 19, 2019, OWCP denied appellant's traumatic injury claim, finding that he failed to submit medical evidence establishing a causal relationship between his diagnosed conditions and his accepted January 15, 2019 employment incident.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Order Remanding Case*, Docket No. 19-1929 (issued August 3, 2020).

<sup>5</sup> The record reflects that appellant has a prior traumatic injury claim involving a back injury. On October 5, 2015 appellant, then a 61-year-old audio visual specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 4, 2015 he sustained lumbar back pain, muscle strain, hypertension, and a contusion after he fell on office steps and slipped onto his back while in the performance of duty. He did not stop work. OWCP assigned OWCP File No. xxxxxx897. It administratively combined the files for OWCP File Nos. xxxxxx897 and xxxxxx142 designating the latter as the master file.

On March 26, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In additional February 26, 2019 treatment notes, Dr. Reid described appellant's history of back pain beginning one month earlier and noted his fall on January 15, 2019. She noted that he had a spinal stimulator for previously diagnosed lumbar disc herniation and facet disease. Dr. Reid diagnosed lumbar disc herniation with myelopathy status post a blunt injury with a fall on ice. She examined appellant on March 27, 2019 due to musculoskeletal pain following a fall at work and diagnosed herniated lumbar intervertebral disc.

On March 12, 2019 appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan, which demonstrated a mild disc bulge at L4-5 with probable small superimposed broad-based central protrusion and severe facet arthropathy.

On April 2, 2019 Dr. Thomas Raley, a Board-certified orthopedic surgeon, examined appellant due to chronic low back pain with intermittent radiation to his lower extremities. He noted the January 15, 2019 fall at work and findings on the March 12, 2019 MRI scan of mild disc bulge at L4-S1 with spinal nerve root compression or foraminal stenosis. Dr. Raley diagnosed chronic pain syndrome and lumbar radiculopathy.

In an April 5, 2019 note, Dr. Reid diagnosed lumbar disc displacement and chronic pain. She described an injury where appellant fell at work in January 2019.

On April 16, 2019 Dr. Teresa M. Kerge, a Board-certified physiatrist, examined appellant due to back pain and noted that his condition was injury-related as he slipped and fell on ice at work. She reviewed his March 12, 2019 MRI scan and diagnosed sacroiliitis.

By decision dated June 3, 2019, OWCP's hearing representative affirmed the March 19, 2019 OWCP decision. Appellant appealed to the Board and in its August 3, 2020 order,<sup>6</sup> the Board set aside the June 3, 2019 decision and remanded the case, directing OWCP to combine appellant's claims under File Nos. xxxxxx142 and xxxxxx897 and issue a *de novo* decision.

In an April 1, 2019 note, Dr. Raley reported that appellant slipped on ice at work on December 15, 2018 and had experienced pain since that fall. He diagnosed radiculopathy lumbar region, spondylosis without myelopathy or radiculopathy lumbar region, and low back pain. Dr. Raley noted that appellant had experienced low back pain and bilateral lower extremity pain since his fall. On April 17, 2019 he diagnosed chronic pain syndrome, lumbar spondylosis without myelopathy or radiculopathy, lumbar radiculopathy, and low back pain. Dr. Raley again noted appellant's fall at work on January 15, 2019. He further noted that appellant fell down a few stairs at work on September 4, 2015 and landed on his back. Dr. Raley reviewed appellant's October 2015 lumbar MRI scan, which demonstrated L4-5 mild disc bulge and mild central canal stenosis L5-S1 as well as his June 11, 2018 lumbar MRI scan, which demonstrated L4-5 and L5-S1 facet hypertrophy and L4-5 degenerative disc disease. He diagnosed chronic pain syndrome

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<sup>6</sup> *Supra* note 4.

and radiculopathy of the lumbar region. Dr. Raley repeated his findings in notes dated May 15 through August 8, 2019.

On September 6 and October 4, 2019 Dr. Brian Lee, a Board-certified anesthesiologist, noted appellant's history of a January 15, 2019 fall on ice at work and reported that lumbar spine surgery was scheduled for October 7, 2019. He diagnosed chronic pain syndrome, lumbar spondylosis, lumbar radiculopathy, and low back pain. In a November 1, 2019 note, Dr. Lee reported that the October 7, 2019 microdiscectomy had reduced appellant's right leg radiating pain.

By decision dated November 16, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record had not established that the employment incident occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On November 20, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In notes dated May 9, 2019 through November 4, 2020, Dr. Wahid Baqaie, a Board-certified orthopedic surgeon, opined that appellant originally injured himself in a 2015 fall and that he fell again at work on January 15, 2019 resulting in back pain. He diagnosed lumbar spondylosis, spinal stenosis, degenerative lumbar disc, and lumbar back pain. Dr. Baqaie found that appellant was status post L5-S1 laminotomy with no evidence of instability.

A hearing was conducted on March 22, 2021, wherein appellant described the January 15, 2019 employment incident and resulting medical treatment.

Following the oral hearing, Dr. Baqaie provided treatment notes dated July 3, 2019 through February 10, 2021. He reported that appellant's back symptoms developed suddenly and were associated with falling on ice at work on January 15, 2019.

By decision dated June 4, 2021, OWCP's hearing representative affirmed, as modified, OWCP's prior decision, finding that appellant had established that the January 15, 2019 employment incident occurred, as alleged, but determined that the medical evidence was insufficient to establish causal relationship between the diagnosed back conditions and the accepted January 15, 2019 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>8</sup> that an injury was sustained in the performance of duty, as alleged, and that

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<sup>7</sup> *Supra* note 3.

<sup>8</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>9</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>10</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>11</sup>

The evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>12</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted January 15, 2019 employment incident.

OWCP received treatment notes from Dr. Reid dated February 26 through April 5, 2019 in which she diagnosed lumbar disc displacement. Dr. Reid found that appellant experienced a blunt injury when he fall on ice at work on January 15, 2019. On April 16, 2019 Dr. Kerge diagnosed sacroiliitis and opined that this condition was work related as appellant slipped and fell on ice at work. Dr. Baqaie provided treatment notes dated July 3, 2019 through February 10, 2021 diagnosing lumbar spondylosis, spinal stenosis, degenerative lumbar disc and reporting that appellant's back symptoms developed suddenly and were associated with falling on ice at work on January 15, 2019.

While Drs. Reid, Kerge, and Baqaie attributed appellant's diagnosed back conditions to his accepted January 15, 2019 employment incident, neither physician provided medical reasoning

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<sup>9</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>11</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

explaining how or why the fall resulted in his diagnosed conditions. These reports are, therefore, of limited probative value and insufficient to establish causal relationship.<sup>14</sup>

In January 18 and 30, 2019 notes, Dr. Mangal described appellant's January 15, 2019 fall and diagnosed lumbar radiculopathy. Dr. Raley submitted a series of notes from April 1 through August 8, 2019 in which he recounted the January 15, 2019 fall at work and diagnosed lumbar radiculopathy. Similarly, in notes dated September 6 and October 4, 2019, Dr. Lee noted his history of a January 15, 2019 fall on ice at work and diagnosed chronic pain syndrome, lumbar spondylosis, lumbar radiculopathy. None of these physicians provided an opinion on the cause of appellant's condition. The Board has long held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.<sup>15</sup> Therefore, these reports are insufficient to establish appellant's claim.

On January 15, 2019 Dr. Bindal noted appellant's history of injury and diagnosed traumatic pain as well as a history of chronic back pain. In a February 26, 2019 note, Dr. Reid found appellant experienced back pain for one month following a fall. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.<sup>16</sup> A medical report lacking a firm diagnosis is of no probative value.<sup>17</sup> These reports are, therefore, also insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

Appellant submitted an MRI scan dated March 12, 2019. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.<sup>18</sup> For this reason, the MRI scan is insufficient to meet appellant's burden of proof.

As there is no medical evidence of record establishing that appellant's diagnosed back conditions were causally related to the accepted employment incident, the Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted January 15, 2019 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>14</sup> *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

<sup>15</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *See E.S.*, Docket No. 21-0189 (issued November 16, 2021); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

<sup>17</sup> *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *E.S.*; *C.S.*, *id.*; *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>18</sup> *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted January 15, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board